

LICHAULT  
SUPREME COURT, U.S.

No. 204

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In the Supreme Court of the United States

October Term, 1951

EDWARD DUMMETT, PETITIONER

HOWARD McGRATE, ATTORNEY GENERAL AS SUC-  
CESSOR TO THE ASSET PROPERTY CUSTODIAN, AND  
GEORGE NEWMAN CRANE, AS TREASURER OF THE  
UNITED STATES

ON WRIT OF CERTIORARI TO THE UNITED STATES  
COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA  
CIRCUIT

FILED FOR THE RESPONDENTS



# **In the Supreme Court of the United States**

**OCTOBER TERM, 1951**

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**No. 204**

**RICHARD GUESSEFELDT, PETITIONER**

**v.**

**J. HOWARD MCGRATH, ATTORNEY GENERAL AS SUC-  
CESSOR TO THE ALIEN PROPERTY CUSTODIAN, AND  
GEORGIA NEESE CLARK, AS TREASURER OF THE  
UNITED STATES**

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**ON WRIT OF CERTIORARI TO THE UNITED STATES  
COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA  
CIRCUIT**

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**BRIEF FOR THE RESPONDENTS**

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## **OPINIONS BELOW**

The opinion of the Court of Appeals for the District of Columbia Circuit (R. 24-28) is not yet reported. The opinion of the District Court (R. 11-20) is reported at 89 F. Supp. 344.

## **JURISDICTION**

The judgment of the Court of Appeals (R. 29) was entered May 3, 1951. The petition for a

writ of certiorari was filed July 26, 1951 and was granted October 8, 1951. The jurisdiction of this Court rests upon Section 1254(1) of Title 28, United States Code.

#### QUESTION PRESENTED

Whether the provision of Section 39 of the Trading With the Enemy Act that no property of any national of Germany or Japan vested after December 17, 1941, shall be returned to the former owner prohibits recovery of such property in a suit brought under Section 9(a) of the Act by a German citizen, regardless of whether the plaintiff would otherwise be eligible to maintain suit under Section 9(a).

#### STATUTES INVOLVED

The relevant provisions of the Trading With the Enemy Act, as amended, of the Executive Orders issued thereunder, and of other pertinent statutes and treaties are set forth in the Appendix to the brief of petitioner (respondent here) in *McGrath v. Nagano*, No. 169, this Term.

#### STATEMENT

Petitioner's suit is brought under § 9(a) of the Trading With the Enemy Act (40 Stat. 419, as amended, 50 U.S.C. App. §9(a)), for the return of property vested pursuant to § 5(b) of the Act (55 Stat. 839, 50 U.S.C. App. §5(b)), as belonging to a national of Germany. The complaint (R. 2-10) alleges, *inter alia*, that plaintiff has been a resident of Hawaii since 1896; that in



1938 he left Hawaii for a vacation in Germany; that he was present there between 1938 and 1949; that upon the outbreak of war in September, 1939, despite his persistent efforts, he was unable to secure return passage to Hawaii; and that, while in Germany, he committed no act hostile to the interests of the United States. The complaint also declares that plaintiff was born in Germany in 1870 and that he is still a citizen of that country. Respondent moved to dismiss for failure to state a claim on which relief can be granted. The District Court granted the motion, holding that Section 39 of the Act precluded recovery (R. 11-20). The Court of Appeals for the District of Columbia Circuit affirmed (R. 24-28).

#### ARGUMENT

This is a companion case to *McGrath v. Nagano*, No. 169. The Government's sole contention here and one of its two contentions in the *Nagano* case is that § 39 of the Trading With the Enemy Act bars recovery of vested property under § 9(a) of that Act by any person who was a "national" of Germany or Japan. We have briefed that contention fully in No. 169. The petitioner was admittedly a citizen of Germany and present there during the war. Consequently, he is a "national" of Germany within the meaning of § 39 (*Nagano* brief, pp. 32-36). Accordingly, his suit, like that of Mrs. Nagano, is barred by § 39. (*Nagano* brief, pp. 10-39.)

In the present case the Government made no contention in the courts below that, apart from the application of §39, petitioner was on the facts alleged an "enemy" ineligible to recover under §9(a). We are content to treat the motion to dismiss as presenting only the issues arising under §39. Should those issues be decided against our contentions, we of course reserve the right, on remand of the case, to present, by motion, answer or other appropriate pleading, any other defenses to the action which we may have.

#### CONCLUSION

For the reasons stated herein and in the brief for petitioner in No. 169, the judgment below should be affirmed.

Respectfully submitted,

PHILIP B. PERLMAN,  
*Solicitor General.*

HAROLD I. BAYNTON,  
*Assistant Attorney General.*

JAMES D. HILL,  
GEORGE B. SEARLS,  
IRWIN A. SEIBEL,

*Attorneys.*

NOVEMBER 1951.

